



**Billing code: 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

**[Docket No. FWS–R9–MB–2011–0033]**

**[91200–1231–9BPP]**

**RIN 1018–AX82**

**Migratory Bird Permits; Double-crested Cormorant Management in the United States**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Request for comments.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), are requesting public comments to guide the preparation of a Supplemental Environmental Impact Statement or Environmental Assessment on the development of revised regulations governing the management of double-crested cormorants. Under current regulations, cormorant damage management activities are conducted annually at the local level by individuals or agencies operating under USFWS depredation permits, the existing Aquaculture Depredation Order, or the existing Public Resource Depredation Order. The depredation orders are scheduled to expire on June 30, 2014. This analysis will update the 2003 Final Environmental Impact Statement (FEIS): Double-crested cormorant management in the United States (USFWS 2003).

**DATES:** Electronic comments on this notice via <http://www.regulations.gov> must be submitted by midnight Eastern Time on [*insert date 90 days after date of publication in the Federal Register*]. Comments submitted by mail must be postmarked on or before [*insert date 90 days after date of publication in the Federal Register*].

**ADDRESSES:** You may submit comments by either one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0033.
- *U.S. Mail or hand delivery:* Public Comments Processing, Attn: FWS–R9–MB–2011–0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the **Public Comments** section below for more information.

**FOR FURTHER INFORMATION CONTACT:** Terry Doyle, Wildlife Biologist, Division of Migratory Bird Management, 703–358–1799.

**SUPPLEMENTARY INFORMATION:**

We seek comments to help us determine future national policy for effective management of double-crested cormorant (DCCO, *Phalacrocorax auritus*) populations within the United States. Primary management objectives surrounding DCCOs are at times in conflict. They include meeting conservation obligations under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.) and other Federal laws, while enabling

management of human–wildlife conflicts related to the expansion of DCCO populations, particularly in the Great Lakes and southeastern United States. Developing a comprehensive national policy requires consideration of the decision process at each of the geographic scales relevant to DCCO management. Management decisions are made at the local level (including individual lakes, breeding colonies, aquaculture facilities, and roosts), at the State level, regional or national scales, and across international borders. Under the current regulations, control activities are proposed and conducted annually at the local level by individuals or agencies operating under depredation permits (50 CFR 21.41), the Aquaculture Depredation Order (AQDO, 50 CFR 21.47), or the Public Resource Depredation Order (PRDO, 50 CFR 21.48). U.S. Fish and Wildlife Service (USFWS) Regional Directors make annual decisions on whether to allow these activities. Ultimately, the USFWS Director will decide, through the National Environmental Policy Act (NEPA) process, on a national management strategy by June 30, 2014, at which time the existing depredation orders are scheduled to expire.

The analysis will be prepared in cooperation with the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS–WS). The decision to prepare a Supplemental Environmental Impact Statement or Environmental Assessment will be based on responses to this notice and: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) U.S. Department of the Interior regulations implementing NEPA (43 CFR part 46), and (4) USFWS implementing provisions (516 DM 8).

## **Background**

### *Ecological context*

Double-crested cormorant populations, especially those breeding in the Great Lakes States and provinces and wintering in the southeastern United States, have increased rapidly since the mid-1970s, and may have reached or exceeded carrying capacity in the Great Lakes. Before that time, DCCOs were considered a rare breeder in the Great Lakes, with the first confirmed nesting documented in 1913 (Wires and Cuthbert 2006). The reasons for the rapid expansion are unknown, but likely involved several factors, including U.S. Federal protection under the MBTA in 1972, the elimination of DDT, the expansion of the aquaculture industry and construction of reservoirs in the Southeast, and alterations of the Great Lakes fish communities.

By the mid 1990s, DCCO populations were perceived to have a negative impact on the aquaculture industry and on natural resources at many locations across North America. Double-crested cormorants have been implicated in several human–DCCO conflict issues including depredation of aquaculture stocks and local sport and commercial fisheries, as well as conflicts with other conservation interests such as damage to sensitive vegetation and other colonial nesting bird species (Fielder 2010, Glahn and Brugger 1995, Hebert et al. 2005, Rudstam et al. 2004, Somers et al. 2007).

In certain areas, evidence suggests that DCCOs have contributed to declines in walleye, yellow perch, and smallmouth bass, whereas in other areas no such evidence exists for the decline of sport fishery stocks (Seefelt and Gillingham 2006). The implication of DCCOs as a causative factor in these declines is confounded, however, by

uncertainties regarding the effect of other ecosystem changes (e.g., exotic species introductions, lower nutrient loading, or decreases in alternate prey) and how these changes interact with each other and with DCCO population dynamics.

*Legal, regulatory, and management context*

The USFWS has statutory authority to manage migratory bird populations in the United States, under the MBTA (16 U.S.C. 703–712) and the Conventions with Canada (1916 as amended in 1996), Mexico (1936 as amended in 1972), Japan (1972), and Russia (1976). We have interstate regulatory authority over cormorants and permit take by individuals and agencies. All the Conventions, except the one with Mexico, specifically mention allowing the lethal take of birds and eggs to protect injury to agricultural interests, persons, or property. The Federal regulation at 50 CFR 21.1 provides limited exceptions to protections afforded by the MBTA, such as the establishment of depredation orders.

In response to rapidly increasing wintering populations in the southeastern United States, breeding populations of DCCOs in the Great Lakes region, and concerns about potential impacts, we adopted two depredation orders that facilitate the control of depredating DCCOs. The Aquaculture Depredation Order (AQDO) was established in 1998 to assist with the control of DCCOs at aquaculture facilities in 13 States. In 2003, we modified the AQDO and established a Public Resource Depredation Order (PRDO) to protect additional public resources including fish, wildlife, plants, and their habitats from DCCO impacts in 24 States (USFWS 2003). Both depredation orders were recently authorized to remain in effect through June 2014 (USFWS 2009a and USFWS 2009b).

Prior to establishment of the depredation orders, depredation permits were the primary tool used to resolve DCCO conflicts. Permits are still used to resolve conflicts related to human health and safety and economic losses to private property in all States, including those operating under the depredation orders.

Double-crested cormorants in the United States are managed at selected sites on the breeding and wintering grounds and during migration to alleviate damage and lessen economic, social, and ecological conflicts. Management actions are conducted locally each year and include various forms of harassment, shooting, nest and egg destruction, and egg oiling. Under the PRDO, agencies (State fish and wildlife agencies, Federally recognized Tribes, and APHIS–WS) submit annual written proposals to the USFWS Regional Migratory Bird Permit Office (RMBPO) describing the locations and levels of proposed management actions. The Regional Director may prevent any activities that pose a threat to the long-term sustainability of DCCOs or any other migratory bird species. Often, decisions are made through interactive communications between the action agencies and USFWS. In some cases, USFWS asks action agencies to clarify their request or provide additional rationale for a decision. Inter-agency coordination also occurs through the NEPA process when environmental assessments are developed for DCCO management within individual States.

No such interaction occurs under the AQDO. However, aquaculture producers may operate under the AQDO only in conjunction with an established nonlethal harassment program as certified by APHIS–WS as outlined in WS Directive 2.330. This certification is documented on WS Form 37, which APHIS–WS is required to share with the USFWS when requested. Aquaculture producers submit an annual report of take by

location and date, as does APHIS–WS for take at roosts in the vicinity of aquaculture facilities.

We retain the authority to revoke privileges to operate under the PRDO or AQDO if we believe the depredation orders have not been adhered to, or if the long-term sustainability of DCCO populations is threatened. Since 2004, total annual take of DCCOs in the United States has averaged 27 percent of the amount projected in the 2003 FEIS, for depredation permits, expanded AQDO, and PRDO (USFWS 2003).

### **Preliminary Objectives**

We have identified the following objectives that will be used to evaluate the alternatives. We identified three fundamental objectives:

- (1) To meet our legal obligations under the MBTA, Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668), Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and other Federal laws;
- (2) to minimize conflicts related to DCCO impacts and resultant management actions; and
- (3) to minimize the costs of implementing regulations.

Each alternative will be measured against the following criteria, or means objectives, to determine how it facilitates achieving the fundamental objectives:

- (1) Maintain sustainable DCCO populations;
- (2) minimize negative impacts to other migratory birds and threatened and endangered species;
- (3) maximize the ability to manage DCCO conflicts;

- (4) maximize the social acceptance of DCCO management actions;
- (5) minimize the cost of implementation by action agencies; and
- (6) minimize the cost of USFWS oversight.

### **Preliminary Alternatives**

We considered several alternative management actions in the 2003 EIS (USFWS 2003) including:

- (1) No Action;
- (2) Non-lethal Management;
- (3) Increased Local Damage Control;
- (4) Public Resource Depredation Order;
- (5) Regional Population Reduction; and
- (6) Regulated Hunting.

That environmental review resulted in the selection of the alternative establishing the PRDO and modifying the AQDO (USFWS 2003). In addition to considering the management alternatives identified above, the following actions may be included and addressed in the new NEPA analysis:

- (1) Renewing the depredation orders as currently written (with or without an expiration date);
- (2) modifying the current depredation orders;
- (3) allowing the depredation orders to expire; or
- (4) adopting a different alternative that may or may not have been considered in the 2003 EIS.



## **Public Comments**

We seek comments and suggestions from the public, concerned government agencies, Tribes, industry, the scientific community, and other interested parties regarding the problem, objectives, and alternatives that we have described and identified. Explaining your reasons will help us evaluate your comments. Of particular interest are answers to the following questions:

(1) Have we accurately described the problem? If not, how could it be better described?

(2) Are there fundamental or means objectives regarding DCCO management missing from the list above that we should consider?

(3) Should the current fundamental or means objectives be modified? If so, how?

(4) How would you rank the relative importance of the identified fundamental and means objectives? Please provide your rationale.

(5) Are there any other alternatives that should be evaluated? If so, please describe them in sufficient detail so that they can be evaluated.

(6) Should any of the identified alternatives be modified? If so, how?

(7) How would you rank the preliminary list of alternatives? Please provide your rationale.

As examples of the level of detail needed to evaluate alternatives, we present the specifics of two alternatives that will likely be evaluated: the current and an alternative version of both the AQDO and PRDO. In many cases, the alternative versions attempt to resolve ambiguities in existing regulations.

Table 1. — Current Aquaculture Depredation Order (AQDO) provisions, and an example of an alternative version of the AQDO with modified provisions.

<b>Provision in 50 CFR 21.47</b>	<b>Current</b>	<b>Modified</b>
(b) Area of coverage	Commercial freshwater aquaculture facilities and State and Federal fish hatcheries in 13 States (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas).	(1) Should saltwater facilities be included?  (2) Should we modify the coverage by eliminating States that have not used the AQDO (e.g., Oklahoma, South Carolina, and Tennessee) and consider adding other States?
(c)(2) APHIS–WS	Authorized to take DCCOs at roosts in the vicinity of aquaculture facilities.	Define vicinity as being within a reasonable distance of the facility such that DCCOs at the roost site are likely to be responsible for depredation.
(c)(3) Agents	Agents are authorized.	Should we require training for agents?

<b>Provision in 50 CFR 21.47</b>	<b>Current</b>	<b>Modified</b>
(d)(1) Certification	Producer certified by APHIS–WS.	(1) Certification renewed on a regular basis.  (2) APHIS–WS required to submit WS Form 37s to Regional Migratory Bird Permit Office (RMBPO).
(d)(2) Methods of take	Firearms including rifles.  Nontoxic shot.	(1) Define firearms.  (2) Should we change this to nontoxic ammunition?
(d)(6) Carcass disposal	Donate, bury, incinerate.  Not to be sold.	Should we allow the option to leave birds in ponds?
(d)(7) Incidental take	Report to RMBPO immediately.	Report to RMBPO within 2 days.
(d)(8) Endangered Species Act provisions	Provisions for wood stork and bald eagle	Provisions for wood stork
(d)(9) Recordkeeping		(1) Clarify calendar year.  (2) Reports due to the RMBPO by January 31 <sup>st</sup> of the following year.
(f) Expiration	June 30, 2014	Should we have an expiration date? If so,

<b>Provision in 50 CFR 21.47</b>	<b>Current</b>	<b>Modified</b>
		when?
Other: Bald and Golden Eagle Protection Act provisions	None	Add provisions for bald eagle protection.

Table 2. — Current Public Resource Depredation Order (PRDO) provisions, and an example of an alternative version of the PRDO with modified provisions.

<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
(b) Area of coverage	Lands and freshwaters in 24 States (Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin).	(1) Should saltwater systems be included?  (2) Should we modify the coverage by eliminating States that have not used the PRDO (e.g., Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and West Virginia) and consider adding other States?

<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
(c)(1) Action agencies	State fish and wildlife agencies, Federally recognized Tribes, and State Directors of APHIS–WS.	Should we add National Fish Hatcheries, National Wildlife Refuges, and National Parks operating on their own land?
(c)(1) Public resources	Fish (including hatchery stock at Federal, State, and Tribal hatcheries), wildlife, plants, and their habitats.	<p>(1) Define specifically as natural resources managed and conserved by public agencies for public benefit.</p> <p>(2) Should we add resource allocation among anglers, forage fish, and DCCOs as a public resource?</p> <p>(3) Should we remove nonnative species from consideration as a public resource?</p>
(c)(2) Agents	Allowed.	<p>(1) Should we require training for agents?</p> <p>(2) Should we eliminate agents?</p>

<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
(d)(2) Methods of take	Egg oiling, egg and nest destruction, cervical dislocation, firearms, and CO2 asphyxiation.  Nontoxic shot.	(1) Define firearms.  (2) Should we change this to nontoxic ammunition?
(d)(4) Landowner permission	Yes	Does this need clarification for birds taken off shore of private property?
(d)(6) Carcass disposal	Donate, bury, incinerate.  Not to be sold.	(1) Add properly conducted composting.  (2) Should we allow the option to leave carcasses on site when disturbance to co-nesters is an issue?
(d)(7) Incidental take	Report to RMBPO immediately.	Report to RMBPO within 2 days.
(d)(8) Endangered Species Act provisions	Provisions for wood stork, bald eagle, piping plover, and interior least tern.	(1) Provisions for wood stork, piping plover, and interior least tern.  (2) Should we add provisions for snowy plover

<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
		where it is threatened?
(d)(9)(i) Notification	Required 30–day written notice to RMBPO in advance of actions taking more than 10 percent of a breeding colony.	<p>(1) Change “breeding colony” to “established breeding colony”.</p> <p>(2) Define breeding colony.</p> <p>(3) Define established breeding colony.</p> <p>(4) Define threshold percent from potential biological removal (PBR) criteria.</p> <p>(5) Clarify whether part of the threshold percent can be taken within 30 days notice.</p>
(d)(9)(ii) Approval	Regional Director can prevent if long-term sustainability of DCCOs or any other migratory bird species is threatened.	In addition, RMBPO acknowledges receipt.
(d)(10) Recordkeeping	Number of nests oiled by date and location.	<p>(1) Define location:</p> <p>(a) during breeding season use colony location.</p>

<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
		<p>(b) during nonbreeding season use next larger scale (e.g., bay, lake, area, etc.).</p> <p>(2) Add number of nests destroyed, empty nests, and otherwise untreated nests, by date and location.</p>
(d)(11) Reporting period	<p>(1) October 1 to September 30 reporting period.</p> <p>(2) Due December 31.</p>	<p>(1) Report on calendar year.</p> <p>(2) Due March 15<sup>th</sup> of the following year.</p>
(d)(12) Requirements if reducing or eliminating a local breeding population	<p>(1) Evaluate effects of management activities on DCCOs at the control site.</p> <p>(2) Evaluate, by means of collecting data or using best available information, effects of management activities on the public resources being protected and on nontarget species.</p>	<p>(1) Define "local breeding population."</p> <p>(2) Distinguish and define "established" local breeding population.</p> <p>(3) Should we require data collection and eliminate using best available information?</p>
(f) Expiration	June 30, 2014	Should we have an



<b>Provision in 50 CFR 21.48</b>	<b>Current</b>	<b>Modified</b>
		expiration date? If so, when?
Other: Justification		Agreement between USFWS Regions on standards, especially regarding impact to fish.
Definitions		Define regional population.
Timing of control		Should we require a moratorium on shooting adults when nestlings are present?
Bald and Golden Eagle Protection Act provisions		Add provisions for bald eagle protection.
State-wide coordination groups		Should this be required if there is more than one action agency in a State?

In addition, APHIS–WS and some State fish and wildlife agencies have continued to express interest in the Regional Population Regulation alternative (formerly referred to as Regional Population Reduction), though we considered and rejected that alternative in the 2003 EIS. To assist us in further evaluating that alternative, we are requesting

information that will help us answer the following questions:

- (1) Define “regional.”
  - a. What scale?
  - b. What geographic area?
- (2) How will population objectives be established?
  - a. Breeding population?
  - b. Wintering population?
- (3) How will birds breeding in Canada be incorporated?
- (4) How will allowable take be allocated by State?
- (5) How will allocated take be distributed, and how will this affect take by aquaculture producers?
- (6) Where does the funding come from to implement this alternative?
- (7) What are the implications of taking birds that are not directly causing damage? Does this alternative just shift the public pressure to the national level?
- (8) What are the implications if this alternative does not have the desired effect and local conflicts continue to occur?

You may submit your comments and supporting materials only by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax, or written comments sent to an address other than the one listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the web site. If you

submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

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Dated: October 17, 2011

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Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2011-28755 Filed 11/07/2011 at 8:45 am; Publication Date: 11/08/2011]